

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ROBERT A. ZAGO</b>	)	
Claimant	)	
VS.	)	
	)	
<b>ANDERSON INTERIORS</b>	)	Docket No. 202,528
Respondent	)	
AND	)	
	)	
<b>ALLIED MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer on July 17, 1997.

**ISSUES**

In its application for review, respondent raises the following issues:

- (1) Whether claimant suffered personal injury by accident arising out of and in the course of his employment.
- (2) Whether timely notice of accident was given.
- (3) Whether medical treatment is necessary.
- (4) Whether claimant may receive temporary total disability compensation.
- (5) Whether the Administrative Law Judge exceeded his jurisdiction in granting benefits where no new evidence was submitted after a previous preliminary hearing Order finding claimant had not proven an accident arising out of and in the course of his employment.



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record and considered the briefs of the parties, the Appeals Board finds as follows:

(1) Claimant was injured in an automobile accident on April 17, 1995. Claimant testified that he was a passenger in a truck owned by respondent. They were en route to pick up underlayment which was necessary to finish the job he was working on for respondent. Claimant was also traveling to purchase transmission fluid for his own vehicle that was also used to haul materials to and from the job site.

The Appeals Board finds claimant was operating in furtherance of his employer's interests. At the time of the accident claimant was on a direct route to the respondent's shop to get the underlayment. Although claimant had temporarily deviated from his employment to buy lunch, claimant had returned to the business purpose of the trip at the time of the accident. Accordingly, the accident arose out of and in the course of claimant's employment with respondent.

(2) Respondent did not make notice an issue at the April 29, 1997, preliminary hearing. As notice was not an issue before the Administrative Law Judge, it will not be considered for the first time on appeal. Furthermore, respondent admitted timely notice at the November 7, 1995, preliminary hearing.

(3)(4) Whether medical treatment is necessary and whether claimant is temporarily totally disabled are not issues which the board has the jurisdiction to consider on an appeal from a preliminary hearing.

(5) An administrative law judge is not limited in the number of preliminary hearings that may be held in a case. Even in the absence of new evidence, an administrative law judge may reconsider a decision made at a previous preliminary hearing.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated July 17, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1997.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Jeffrey S. Austin, Overland Park, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director